

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 04-0231P

Income Tax

For the Calendar Years 1994 thru 2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty and underpayment of estimated tax penalty.

STATEMENT OF FACTS

The late penalty and underpayment penalty were assessed on the filing of delinquent income tax returns for the calendar years 1994 through 2002.

The taxpayer is a company located out-of-state.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty be waived as the taxpayer was not aware of the filing requirements. All Indiana sales were reported to California and the taxes were paid to California in regard to those liabilities. After being audited by the California Franchise Tax Board, the taxpayer realized it had a requirement to file separate income tax returns in Indiana. The taxpayer filed all delinquent tax returns for the tax years 1994 through 2002 in the year 2003.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the

Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer’s penalty protest is denied.